

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

IN RE MONITRONICS)	Civil Action No. 1:13-md-2493-IMK
INTERNATIONAL, INC. TELEPHONE)	
CONSUMER PROTECTION ACT)	(THIS DOCUMENT RELATES
LITIGATION)	TO ALL CASES)
)	

**MEMORANDUM OF DEFENDANT MONITRONICS INTERNATIONAL, INC.
IN OPPOSITION TO MOTION TO INTERVENE**

I. INTRODUCTION

Defendant Monitronics International, Inc. (“Monitronics”) opposes the motion of would-be intervenors Timmy J. Tolmes, Amber Lambirt, Wade Albright, Lisa Tulles, Quiana Lovett, April Juarez, Mary Lyn Danielak, Alice Chambers Scott, Michale M. Dixon, Shawna Farley, Tenesha Hardy, Kathleen Jennings and Chelsey Penix (collectively “Proposed Intervenors”) as Proposed Intervenors have not satisfied the requirements for intervention under Federal Rules of Civil Procedure, Rule 24. Specifically: (1) Proposed Intervenors have failed to demonstrate they have a right to intervene under Federal Rules of Civil Procedure, Rule 24(a); (2) Proposed Intervenors have not demonstrated that permissive intervention is warranted under Federal Rules of Civil Procedure, Rule 24(b); and (3) Proposed Intervenors failed to comply with the pleading requirements of Federal Rules of Civil Procedure, Rule 24(c). As a result, Proposed Intervenors may not intervene in this proceeding and their motion should be denied.

II. ARGUMENT

Proposed Intervenors contend they should be allowed to intervene on two independent grounds—as a matter of right under Rule 24(a) and under the permissive intervention rule contained in Rule 24(b). Thus, Proposed Intervenors must establish that grounds exist for

intervention of right under Rule 24(a) *and/or* conditions exist under which the Court may permit intervention under Rule 24(b). They have failed to do so.

A. Proposed Intervenorors Have Not Demonstrated a Right to Intervention.

Rule 24(a) requires a court to permit intervention where the would-be intervenor:

(1) is given an unconditional right to intervene by a federal statute;
or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(Fed. R. Civ. Proc. 24(a)(1),(2).) Further, a would-be intervenor bears the burden of demonstrating to the court a right to intervene and must expressly state the grounds for intervention of right under Rule 24(a). (*See Richman v. First Woman's Bank (In re Richman)*, 104 F.3d 654, 658 (4th Cir. 1997); Fed. R. Civ. Proc. 24(c).) Here, Proposed Intervenorors' motion is completely devoid of any facts or allegations supporting their purported right to intervene.

First, Proposed Intervenorors have not alleged any facts supporting an unconditional right to intervene under a federal statute, nor does the TCPA provide for such an unconditional right for individuals. Thus, Rule 24(a)(1) does not apply to Proposed Intervenorors and the only possible scenario under which Proposed Intervenorors may intervene as of right is under Rule 24(a)(2).

Second, the Fourth Circuit has interpreted Rule 24(a)(2) to require intervention only if the movant can demonstrate each of the following: (1) an interest in the subject matter of the action; (2) that the protection of this interest would be impaired because of the action; and (3) that the applicant's interest is not adequately represented by existing parties to the litigation. (*See*

Teague v. Bakker, 931 F.2d 259, 260-61 (4th Cir. 1991); *Stuart v. Huff*, 706 F.3d 345, 349 (4th Cir. 2013).) In the instant case, Proposed Intervenorors have made no such showing.

Even if the Court accepts Proposed Intervenorors' general allegation that they "have a common vested interest in this litigation in support of the Plaintiff's claims," nothing in their motion even attempts to satisfy the requisite showing that the protection of this "common vested interest" would be jeopardized or impaired if Proposed Intervenorors were not allowed to intervene and that Proposed Intervenorors' interest is not adequately represented by existing parties to the litigation. Moreover, included within the MDL are several putative nationwide class actions purporting to assert TCPA claims. Thus, to the extent Proposed Intervenorors are able to articulate an interest relating to the subject matter of the litigation and intend to allege TCPA claims against one or more of the existing defendants, all indications are that Proposed Intervenorors' interests are being adequately represented by the existing Plaintiffs. This is particularly true where, as here, each of the Proposed Intervenorors appears to be a pro se plaintiff and at least twelve of the thirteen Proposed Intervenorors are currently incarcerated.¹ Accordingly, Proposed Intervenorors' request to intervene as of right should be denied.

B. Proposed Intervenorors Have Not Established that Permissive Intervention is Inappropriate.

If intervention of right is not warranted, a court in certain circumstances may yet allow intervention permissively under Rule 24(b). Rule 24(b) provides, in pertinent part, that on a timely motion, the court may permit anyone to intervene who:

¹ The status of Proposed Intervenorors was determined after researching the names and mailing addresses of the Proposed Intervenorors as set forth in the signature page of their motion.

- (A) is given a conditional right to intervene by a federal statute; or
- (B) has a claim or defense that shares with the main action a common question of law or fact.

Proposed Intervenorors have not satisfied the requirements for permissive intervention under Rule 24(b) as they have not alleged any federal statute that affords them a conditional right to intervene under Rule 24(b)(1)(A). Likewise, they have failed to articulate any claim or defense that shares a common question of law or fact with the existing action. In fact, the motion acknowledges this critical omission as Proposed Intervenorors instead state they “*will* provide questions of laws and facts that are common in this Action.” (Motion at p. 2 (emphasis added).) Thus, on its face, the motion is inadequate and cannot provide a basis for the Court to exercise its discretion to allow permissive intervention.²

C. Proposed Intervenorors Failed to Submit a Proposed Pleading Setting Forth the Claims They Seek to Assert.

Finally, the Court should deny Proposed Intervenorors’ motion to intervene as they have not complied with the requirement under Rule 24(c) that a motion to intervene must “state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.” Proposed Intervenorors did not attach a pleading setting forth the claims or defenses they seek to assert nor did they otherwise include such detail in the motion itself. As a result, Proposed Intervenorors did not comply with Rule 24(c) and the Court should deny the motion on this ground.

² To be sure, nothing in theory prevents the Proposed Intervenorors from filing individual lawsuits in the proper jurisdiction which could then be transferred into the MDL but that would require each of them to actually prepare the proper pleading and tender the filing fee. In addition, as Monitronics previously demonstrated in connection with its renewed motion to dismiss the original Charvat matter transferred into the MDL from the Southern District of West Virginia (Doc. 158-159), there is no personal jurisdiction over Monitronics in West Virginia for calls allegedly placed to telephone numbers in other states.

III. CONCLUSION

Proposed Intervenor's motion fails to satisfy the requirements for intervention under Rule

24. For these reasons, Proposed Intervenor's motion should be denied.

MONITRONICS INTERNATIONAL, INC.

By: /s/ Jeffrey A. Holmstrand
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CERTIFICATE OF SERVICE

Service of *MEMORANDUM OF DEFENDANT MONITRONICS INTERNATIONAL, INC. IN OPPOSITION TO MOTION TO INTERVENE* was had upon the following via the CM/ECF system this 13th day of April, 2015:

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